

**REMARKS**

Claims 4, 6, 7, 9, 10, 11, 12, and 15 have been amended to conform to USPTO practice.

**Rejections under 35 U.S.C. § 103**

Claims 1 – 13 and 15 – 17 are rejected under 35 U.S.C. 103(a) over Scammell (U.S. 6,202,546) and Blackstock (US 3,689,290). This rejection is traversed.

The Office Action asserts that Scammell discloses bovine colostrum, with bioactive components. Scammell discloses a process to introduce liquid colostrum into pasteurized and unpasteurized dairy products. The liquid colostrum is subjected to centrifugation to substantially reduce microbial content of the liquid colostrum (*see Abstract of Scammell*).

Scammell further discloses:

The applicant has discovered that colostrum can be processed so as to reduce the bioburden of liquid colostrum while retaining the biological activity of certain proteins including the immunoglobulin fraction. By this process it is possible to introduce liquid colostrum into pasteurised and unpasteurised dairy products including, for example, milk, skim milk, flavoured milks, other modified milks, yoghurts (natural, flavoured, drinking, frozen), other probiotic formulations, cheese formulations such as cheese sticks, and ice creams. (*See col. 1, ll 41 – 50 of Scammell*)

One skilled in the art would understand that Scammell is directed at enhancing existing dairy products by the addition of liquid colostrum with substantially reduced microbial content and without altering the texture, taste and structure of the dairy product.

Blackstock discloses a food grade flake starch particulate organic carrier. The dry particulate food product is provided by blending together fat and a dry, bland particulate organic carrier (such as food starch, flavoring agents) to provide the flavor and appearance of selected foods. The ensuing mixture is coated with dry powdered coating agent (see Abstract of the Disclosure of Blackstock).

As described above, Scammell discloses a process to introduce liquid colostrum into dairy products without altering the texture, taste and structure of the dairy product and Blackstock discloses a dry particulate to provide the flavor and appearance of selected foods. One skilled in the art, therefore, would not have modified the dairy product of Scammell by introducing the particulates of Blackstock because the resulting dairy product would have an altered texture or taste. As discussed above, one skilled in the art would understand that Scammell is directed at preserving the existing texture and taste of the dairy product and is not directed toward altering the texture and taste of his dairy product.

Furthermore, there is no teaching in the references for one of skill in the art to combine Scammell with Blackstock to arrive at the present invention of a composition to be delivered to the digestive tract of a mammal, which comprises a mixture of bovine colostrum, comprising bioactive components, and organic particulate matter having a size between 0.3 and 7 mm in diameter. Scammell teaches away from the presently claimed invention.

The Office Action has not provided the reason that one of skill in the art would combine the elements in the manner claimed to provide a beneficial effect for patients with gastrointestinal symptoms. Scammell relates to dairy compositions, such as milk, yoghurt and cheese and a method of processing to allow for the inclusion of bovine colostrum into dairy compositions. Blackstock discloses a dry particulate to provide the flavor and appearance of selected foods. Neither Scammell nor Blackstock disclose a beneficial effect of bovine colostrum for patients with gastrointestinal symptoms. Blackstock is also silent regarding the medicinal or physiological effects, such as emptying rate of the stomach, of organic particulate matter with sizes in the range of 0.3 to 7 mm in diameter.

The combination of bovine colostrum, comprising bioactive components, and organic particulate matter having a size between 0.3 and 7 mm in diameter is not a matter of routine maximization of the ranges of the components. There is no incentive to combine the teachings of Scammell and Blackstock because Scammell and Blackstock teach away from this combination. One of skill in the art would not combine organic particles having a size between 0.3 and 7 mm with the dairy products of Scammell.

The Office Action has failed to make the required *prima facie* case, as the cited references, either alone or in combination, do not teach or suggest all the claim limitations, lack sufficient reason to combine, and teach away from the presently claimed invention.

Claims 1 – 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scammell (U.S. 6,202,546) in view of Blackstock (US 3,689,290) and Anderson (US 5,846,569).

As described above for the rejections of claims 1 – 13 and 15 – 17, Scammell discloses a process to introduce liquid colostrum into dairy products without altering the texture and structure of the dairy product and Blackstock discloses a dry particulate to provide the flavor and appearance of selected foods. There is no motivation to combine the teachings of Scammell with Blackstock to arrive at the present invention of a composition to be delivered to the digestive tract of a mammal, which comprises a mixture of bovine colostrum, comprising bioactive components, and organic particulate matter having a size between 0.3 and 7 mm in diameter.

Anderson does not remedy the deficiencies of Scammell and Blackstock as described in the section above. Anderson discloses a dry consumable supplement composed of processed bovine colostrum, magnesium peroxide, a vitamin and a bioflavenoid (*see Abstract of Anderson*). Anderson does not address organic particle size limitations of 0.3 – 7 mm in diameter. Furthermore, Anderson does not teach or suggest a beneficial effect of bovine colostrum for patients with gastrointestinal symptoms. Therefore, Scammell, Blackstock or

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*Amendment dated February 18, 2009*

*Reply to Office Action of August 18, 2008*

Anderson references, alone or in combination, neither teach nor suggest the presently claimed invention.

In view of the foregoing, reconsideration and withdrawal of the § 103(a) rejections to claims 1 – 17 is requested. Applicant does not otherwise concede the correctness of the rejections and reserves the right to make additional arguments as may be necessary.

### **Conclusions**

In view of the above amendments and remarks, Applicants respectfully request a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Please charge any additional fees or credit any overpayment to Merchant & Gould P.C., Deposit Account No. 13-2725.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

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Dennis R. Daley  
Reg. No. 34,994  
DRD:CPM:jrm

